

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY O. STIRES	:	CIVIL ACTION
	:	
v.	:	
	:	
RICHARD ZETTLEMOYER, et al.	:	NO. 98-1472

MEMORANDUM ORDER

This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff seeks redress for alleged violations of his Eighth Amendment rights. Presently before the court is the Motion of defendant Albert DeFranco for Summary Judgment. He contends that plaintiff's claim against him is time barred.

Plaintiff asserts that defendant DeFranco violated his Eighth Amendment rights by denying or delaying medical care necessary to correct his degenerative sinus condition while he was an inmate in the Northampton County Prison ("the Prison"). From the competent evidence of record, as uncontroverted or otherwise viewed most favorably to plaintiff, the pertinent facts are as follow.

While plaintiff was an inmate at the Prison, he developed diseased growths in his nasal passages which obstructed the passage of air and fluid matter. This condition resulted in difficulty in breathing and eating, sinus infections, headaches and pain in the side of the face and skull.

As the medical director of the Prison, Dr. DeFranco was

responsible for the overall operation of the prison medical department and in charge of the medical staff. In September 1994, Dr. DeFranco conducted an examination of plaintiff and scheduled an appointment for plaintiff with an Ear Nose and Throat specialist. Defendant DeFranco knew of plaintiff's worsening condition and that a doctor had recommended surgery on February 21, 1995. Plaintiff wrote a letter on September 28, 1995 to Acting Warden Zettlemoyer complaining about a "deliberate" failure properly to treat his "degenerating skull condition." Plaintiff specifically refers in the letter to a determination by an ear, nose and throat specialist that "corrective surgery is required." Dr. DeFranco ceased working at the Prison in December 1995.

Corrective surgery was not provided to plaintiff until February 1997, almost two years after it was first recommended. By then, plaintiff's condition had deteriorated and the removal of significant tissue was necessary. During a follow-up examination with his surgeon, Dr. Lee, on October 24, 1997, plaintiff learned that this procedure had caused a permanent loss of the sense of smell and a diminished sense of taste.

In actions arising under § 1983, federal courts apply the forum state's statute of limitations for personal injury claims. See Wilson v. Garcia, 471 U.S. 261, 276-78 (1985); 287 Corporate Ctr. Assocs. v. Township of Bridgewater, 101 F.3d 320,

323 (3d Cir. 1996). In Pennsylvania, such claims are subject to a two-year statute of limitations. See Knoll v. Springfield Township, 763 F.2d 584, 585 (3d Cir. 1985); 42 Pa. C.S.A. § 5524 (West Supp. 1997).

While state law provides the time within which a plaintiff must file a §1983 suit, federal law governs when a cause of action accrues and the statutory period begins to run. See LRL Properties v. Portage Metro Housing Authority, 55 F.3d 1097, 1107 (6th Cir. 1995); Deary v. Three Un-Named Police Officers, 746 F.2d 185, 197 n.16 (3d Cir. 1985). Section 1983 claims "accrue when the plaintiff knows or should know that his or her constitutional rights have been violated." Wilson v. Giesen, 956 F.2d 738, 740 (7th Cir. 1992). See also Rose v. Bartle, 871 F.2d 331, 348 (3d Cir. 1989).

The Eighth Amendment prohibits deliberate indifference to a serious medical need of a prisoner. Estelle v. Gamble, 429 U.S. 97, 106 (1976). An intentional refusal to provide needed medical care, the delayed provision of care for non-medical reasons or the prevention of an inmate from receiving recommended treatment are actionable under this standard. Durmer v. O'Carroll, 991 F.2d 64, 68 (3d Cir. 1993).

Plaintiff clearly knew or should have known of the denial or delay of medical treatment by defendant on or shortly after February 21, 1995 when surgery was recommended and then not

provided. Plaintiff's letter to Acting Warden Zettlemoyer shows that at least by September 28, 1995 he indeed recognized that he had a degenerating condition for which he was not receiving the recommended surgical treatment. The limitations period ran from the time plaintiff reasonably should have known that the defendant was deliberately indifferent to his serious medical need, and not from the time the full extent of any loss or damages resulting from the constitutional violation was known. See Two Rivers v. Lewis, 174 F.3d 987, 992 (9th Cir. 1999) (limitations period runs from time plaintiff "knew or had reason to know of the [defendant's] deliberate indifference to his medical needs"); Hill v. Godinez, 955 F. Supp. 945, 950-51 (N.D. Ill. 1997) (limitations period for § 1983 Estelle claim commenced when surgery was not performed at time recommended).

As Dr. DeFranco was the medical director of the Prison, he can be held responsible for the denial and delay of care to the plaintiff. That Dr. DeFranco was acting with deliberate indifference to plaintiff's serious medical needs, however, was apparent to plaintiff at least as early as September 28, 1995. Plaintiff did not sue until two and a half years later. His claim against movant is thus clearly time barred.

ACCORDINGLY, this day of March, 2000, upon consideration of the Motion for Summary Judgment of defendant DeFranco (Doc. #43), and in the absence of any response thereto,

IT IS HEREBY ORDERED that said Motion is **GRANTED** and **JUDGMENT is ENTERED** in the above action for defendant DeFranco and against plaintiff.

BY THE COURT:

JAY C. WALDMAN, J.